IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

APPEAL NO.927 OF 1988

The State of Maharashtra ]..Appellant

Vs.

1. Krishnaprasad Ramprasad Gurum, Age 24 yrs. r/o r/o Pendhar, Original resident of Zegere, Tal.Rambhang, Dist. Shangawe, Nepal State ]

2. Salian Balkrishnan, Age 25 yrs. r/o B.k.Export Company, Taloja MIDC, Originally resident of Pirjanam, Tal. Kudagalur, Dist.Gichur, Kerala State ]

3. Surjitsingh Yograj Rajput, Age 27 yrs r/o Padagha Natha Patil Chowl, originally resident of Lambagaon Tal.pasumpar, Dist. Kengade, Himachal Pradesh ]

4. S.K.Sud, 47, Ques.Ind.,2nd floor Cuf Parade, Colaba Bombay-5 ]

5. Ajaykumar S.Sud, r/o Qiest Ind, 2nd floor, Colaba Bombay-5 ]..Respondents (Ori.Accused)

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Mrs.A.S.Pai A.P.P. for State

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**CORAM: D.G.DESHPANDE AND SMT.V.K.TAHILRAMANI,JJ.**

**DATE : MARCH 20, 2006**

**ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):**

1. Heard Mrs.A.S.Pai, the learned A.P.P. for the State.

2. Through this appeal the appellant-State of Maharashtra has challenged the judgment and order dated 15th July, 1988 passed by the learned Sessions Judge of Raigad, at Alibag in Sessions Case No.60 of 1988. By the said judgment and order, the learned Sessions Judge acquitted the respondents i.e. original accused nos.1 to 5 under Section 20(b) of the N.D.P.S.Act,1985.

3. Prosecution case briefly stated is that on 25.9.1987, an information came to be received that contraband material was kept in the godown of B.K.Export Co. On receipt of information, the raiding party reached the godown and contraband came to be found in the godown. Respondent no.1 was the watchman of the said company. Accused

nos.2 and 3 were found near the premises and accused no.4 was the owner of the said godown.

4. Section 42 of the N.D.P.S.Act, provides that when any information is received by an officer, it has to be taken down in writing. In the present case, it is an admitted fact that when the information was received by the complainant A.C.P. Atmaram Jadhav (P.W.1), it was not reduced into writing. The Supreme Court in the case of **State of Punjab Vs. Baldev Singh reported in 1994 S.C. 1872,** has held that section 42 of the N.D.P.S.Act, 1985 is mandatory in nature and contravention of the same would affect the prosecution case and vitiate the trial. In the present case, it is an admitted fact that section 42 was not complied with. Besides non-compliance of Section 42, other reasons have been given by the learned Sessions Judge for acquitting the respondents. However, we do not think it necessary to go into that aspect as non compliance of Section 42 is sufficient ground to acquit the accused persons.

5. In this view of the matter, the appeal is dismissed.

[D.G.DESHPANDE, J.]

[SMT.V.K.TAHILRAMANI,J.]